

STATE OF MICHIGAN
COURT OF APPEALS

In re HILL/WARREN, Minors.

UNPUBLISHED
December 22, 2020

No. 352272
Kent Circuit Court
Family Division
LC Nos. 17-052017-NA; 17-
052018-NA; 17-052019-
NA

Before: O'BRIEN, P.J., and M. J. KELLY and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) (the conditions that led to the adjudication continue to exist and no reasonable likelihood exists that they will be rectified within a reasonable time considering the children's ages), (g) (respondent, although financially able to do so, failed to provide proper care or custody for the children and will not be able to do so within a reasonable time considering the children's ages), and (j) (a reasonable likelihood exists that the children will be harmed if returned to respondent's home). We affirm.

I. FACTUAL BACKGROUND

The Department of Health and Human Services (DHHS) petitioned to remove the children, CH, CW, and MH, from respondent's care and custody because of her substance abuse issues. Respondent failed to take her prescribed medications and she took medications that she was not prescribed. Respondent contacted the DHHS and expressed her concern that she lacked the ability to care for the children. The trial court authorized the petition and removed the children from the home. The trial court placed CH and CW in foster care, and MH in a relative placement.

Respondent entered a plea of admission and began working on services to address the barriers of substance abuse, emotional stability, parenting skills, and resource availability and management. Respondent took a psychological assessment and had her medications reviewed and updated. She also started attending counseling and meeting with a psychiatrist. The DHHS offered respondent parenting time visits and drug screens and she sometimes participated in those services. Respondent's caseworker, Dena VanWingerden, attempted budgeting with respondent and

referred her to financial management classes. After approximately a year of services, the trial court ordered the children placed back into the home and that respondent work with the Family Reunification Program to ease the transition. The first month of the transition went well, but respondent began to struggle with meeting the children's needs and attending the necessary appointments. Approximately five months later, respondent lost the home that she rented. She had failed to make the payment on a gas bill, and her landlord placed the bill under its name and paid it off. After respondent failed to pay back her landlord, the landlord sued to evict her. Respondent never told anyone about the delinquent bill or the eviction proceedings until after her eviction. The trial court placed the children into foster care finding that the DHHS made reasonable efforts to prevent removal.

Respondent's caseworker became concerned that respondent failed to take her prescribed medications. Further, respondent indicated that she carried the baby of a man who allegedly abused and sexually assaulted her. Respondent's attendance at the parenting visits and therapy sessions and her participation in drug screens became sporadic. Respondent lacked certainty whether she should maintain her parental rights to the children, and the DHHS petitioned to terminate her parental rights. The trial court ultimately terminated respondent's parental rights.

II. ANALYSIS

A. REASONABLE EFFORTS

Respondent argues that the trial court clearly erred by finding that the DHHS made reasonable efforts to prevent her eviction from the home, which she asserts served as the reason that the children were removed. We disagree.

We review for clear error a trial court's decision regarding reasonable efforts. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). A finding is clearly erroneous if we are "left with a definite and firm conviction that a mistake has been made." *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016) (quotation marks and citation omitted). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App at 541, citing *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We review de novo the trial court's interpretation and application of court rules. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). Additionally, we "review for clear error the trial court's findings of fact underlying the legal issues." *In re McCarrick/Lamoreaux*, 307 Mich App 436, 463; 861 NW2d 303 (2014).

A trial court may not terminate parental rights unless the parent has been given a meaningful opportunity to participate in services. *In re Mason*, 486 Mich 142, 156-160; 782 NW2d 747 (2010). "In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). "[The DHHS] has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). However, "[w]hile the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013) (quotation marks and citation omitted). A parent must

meaningfully participate in services provided and benefit from the services offered. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

At the preliminary hearing, the trial court “must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial.” MCR 3.965(B)(12). The trial court may order that the child be placed in foster care if certain conditions are met. MCR 3.965(B)(13)(b), (C)(2). Specifically, MCR 3.965(C)(2)(d) provides that the trial court must find that “reasonable efforts were made to prevent or eliminate the need for removal of the child.” Additionally, MCR 3.965(C)(4) provides that “[w]hen the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required.”

In this case, the record reflects that the DHHS made reasonable efforts to prevent removal the second time by providing respondent the opportunity to participate and benefit from services. The trial court removed the children from respondent’s care and custody because she no longer had a home. Respondent’s landlord evicted her from her home for failing to make payments on her gas bill which resulted in the transfer of the bill to the landlord to prevent shutoff. The landlord paid off respondent’s bill and she failed to pay back the landlord resulting in her eviction. Meanwhile, respondent failed to inform her caseworker of her plight and failed to seek aid.

The record also indicates that respondent’s caseworker recognized at the beginning of this case that one of respondent’s barriers to reunification involved resource management and availability. The caseworker provided respondent services to address this barrier starting in 2017. The caseworker referred respondent to a Michigan State Extension budget class, but respondent never attended. Respondent also told her caseworker that she would participate in a budgeting class through the Michigan State Housing Development Authority (MSHDA), but respondent never confirmed that she did so. The caseworker then provided respondent a list of other budgeting courses that she could attend, but no evidence indicates that respondent ever attended those classes. Further, respondent failed to provide her caseworker proof of her income and bills so that they could create a budget to ensure that respondent properly managed her resources. The record reflects that the caseworker regularly checked the bills of which respondent informed her and to which respondent gave her access.

VanWingerden told respondent that she could possibly get a medical case manager through Network 180 who would assist her with gathering documents. Respondent, however, never requested a medical case manager. Further, the record reflects that VanWingerden requested and the trial court ordered the Family Reunification Program into the home, and the Family Reunification Program agreed to work with respondent on establishing a budget and managing her resources. Respondent, however, never provided it her financial information to enable it to assist her.

Respondent correctly notes that none of the caseworkers attempted to directly intervene in the eviction process. Respondent, however, never informed anyone that she faced eviction, and she never told anyone or showed anyone the gas bill that the utility transferred to her landlord for payment. The record indicates that respondent received an eviction notice and attended landlord-

tenant proceedings, but she never once shared this information with VanWingerden who served as her caseworker at the time the eviction proceedings occurred. VanWingerden had no reason to suspect that respondent had issues because she confirmed that respondent's Section 8 voucher paid for her housing. VanWingerden requested access to respondent's Consumer's Energy account so that she could view respondent's billing statements. Although respondent granted her access, the account information had no trace of the bill that was later transferred to the landlord. VanWingerden testified that respondent mentioned having a second gas bill, but respondent never explained what she meant nor provided that bill to VanWingerden.

Respondent also complains that, during the May 2019 hearing, the trial court improperly relied on the services that were listed in the amended petition to conclude that removal was proper. The record, however, indicates that the trial court clarified during the June 2019 hearing that the DHHS made reasonable efforts to prevent the removal of the children because respondent had several services at her disposal that could have assisted her with a budget, and it specifically noted that respondent failed to share any information with anyone regarding the delinquent bill or the eviction proceedings. Additionally, although not all the services listed in the petition that the DHHS filed to remove the children from the home were provided to assist respondent with resource management, the list did include some of the relevant services like the Michigan State Extension budget class and the Family Reunification Program. The record, therefore, supported the trial court's decision.

Respondent argues further that after the DHHS learned about respondent's eviction, it failed to make any reasonable efforts to prevent the eviction or find the family a new place to live. We disagree.

The record reflects that, after the DHHS learned of respondent's eviction from her home, it contacted MSHDA to discuss her situation. VanWingerden went through court records to gather information on respondent's eviction proceedings and spoke to the landlord about the situation. Although she was unable to help respondent file an appeal, VanWingerden encouraged her to file one. She also referred respondent to the DHHS for financial assistance and referred her to the Salvation Army for housing assistance. VanWingerden explained that no one referred respondent to a shelter where she could stay with the children after her eviction because, at that time, respondent's "mental health appeared to be off." Further, after the eviction, respondent told VanWingerden that she was staying with a relative, but she failed to provide VanWingerden the necessary information so that a background check could be run on that placement to ensure its appropriateness for the children. The trial court considered this evidence and properly concluded that the DHHS made reasonable efforts to prevent the removal of the children from the home.

Respondent argues next that the trial court clearly erred by finding that the DHHS made reasonable efforts to reunite her with the children. We disagree.

"As part of these reasonable efforts, the Department must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, 500 Mich at 85-86. "Trial courts are in the best position, in the first instance, to determine whether the steps taken by the Department in individual cases are reasonable." *Id.* at 88 n 6. We reiterate that, although the DHHS had to expend reasonable efforts to provide services to secure reunification, respondent had a commensurate

responsibility to participate in and benefit from services. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012); *In re Laster*, 303 Mich App at 495.

Respondent argues that the DHHS failed to make reasonable efforts because it never appointed her a guardian ad litem. The record indicates that VanWingerden agreed with respondent's counsel that a guardian ad litem would help respondent with her parent-agency treatment plan, but the record indicates that respondent's counsel never moved for the appointment of a guardian ad litem, and therefore, the trial court did not appoint one for respondent. Regardless, the record reflects that the DHHS made reasonable efforts to provide respondent opportunities to successfully achieve the goals of her parent-agency treatment plan. VanWingerden agreed at the May 2018 hearing to look into finding respondent a medical case manager and at the following hearing explained that respondent lacked eligibility for such a case manager. Nevertheless, VanWingerden spoke to Network 180 about getting respondent a medical case manager, and Network 180 informed her that respondent needed to request a case manager in person at Network 180. VanWingerden believed that a medical case manager would be able to help respondent with some basic tasks such as gathering documentation. The record indicates that at the July 2019 hearing, respondent still did not have a case manager, but the record also indicates that respondent never requested one at Network 180. VanWingerden testified that she would continue to encourage respondent in that regard, but by the termination hearing, nothing indicated that respondent ever attempted to go to Network 180 to request a medical case manager. The record reflects that respondent failed to take responsibility to work on and benefit from her treatment plan.

Respondent also argues that the DHHS failed to make reasonable efforts to find her appropriate housing after her eviction. The record, however, indicates the contrary. After her eviction, the DHHS contacted MSHDA to gather information on respondent's housing status. VanWingerden reviewed the eviction proceeding court records and contacted the landlord and Section 8 to determine if anything could be done about the eviction. Although VanWingerden could not assist respondent in filing an appeal, she encouraged her to do so. VanWingerden also referred respondent to the Salvation Army and the Inner City Christian Federation (ICCF) for housing assistance. The record indicates that the Salvation Army referred respondent to Family Promise for housing. VanWingerden contacted Family Promise to learn what was available for respondent. VanWingerden testified that respondent ultimately applied for housing through ICCF and Family Promise. Respondent told caseworker, Faith Wilkins, that she received a voucher from Community Rebuilders, and Wilkins attempted to contact Community Rebuilders to discuss her voucher. The record reflects that the DHHS made reasonable efforts to assist respondent with her housing needs.

Respondent argues next that the DHHS failed to make reasonable efforts to provide her services to address domestic violence. Although domestic violence was not an initial barrier, domestic violence became a barrier in this case because respondent became involved in an abusive relationship after the trial court removed the children. To address this barrier, VanWingerden agreed to refer respondent to the YWCA because it provided services related to domestic violence. Wilkins testified that respondent had been referred to the YWCA and that she provided her pamphlets and the necessary information so that respondent could attend services at the YWCA. The record, however, indicates that respondent never followed through with the referral and was eventually discharged from the program.

Respondent argues further that the DHHS failed to make reasonable efforts to assist her with resource management and asserts that her financial mismanagement ultimately led to her eviction and housing issues. As discussed previously, the DHHS provided respondent substantial services to address her financial and resource management issues. Her caseworker referred respondent to budgeting classes, and she repeatedly requested proof of respondent's income and bills. VanWingerden gained access to respondent's Consumer's Energy account so that she could keep track of billing statements. She also personally submitted respondent's Section 8 housing application. Both VanWingerden and the Family Reunification offered to make a budget with respondent. The record, however, indicates that respondent repeatedly failed to engage in the services offered to her to address the barrier of resource management. She never attended any of the budgeting courses and repeatedly failed to provide her caseworkers with updated billing or income statements. She never disclosed the delinquent bill that led to eviction proceedings or told anyone about the eviction proceedings. Respondent never made a budget because she never had the necessary financial information. Further, she indicated that she did not want to make a budget.

The record in this case reflects that the trial court properly concluded that the DHHS made reasonable efforts to reunify the family. Respondent was given ample opportunity to engage in services but failed to do so.

B. STATUTORY GROUNDS

Respondent argues next that the trial court erred by finding that clear and convincing evidence established statutory grounds under MCL 712A.19b(3)(c)(i). We disagree.

We review for clear error the trial court's determination of statutory grounds under MCL 712A.19b(3) for termination of parental rights. MCR 3.977(K); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). To terminate parental rights, the trial court must find at least one of the statutory grounds for termination in MCL 712A.19b(3) by clear and convincing evidence. *Id.* A factual finding is clearly erroneous if we are left with a definite and firm conviction that a mistake was made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We defer to the trial court's "special opportunity to judge the credibility of the witnesses." *Id.* (citation omitted).

In this case, the trial court properly terminated respondent's parental rights under MCL 712A.19b(3)(c)(i). First, more than 182 days elapsed since the trial court issued the initial dispositional order. See MCL 712A.19b(3)(c). Second, the conditions that led to the adjudication continued to exist and no reasonable likelihood existed that the conditions would be rectified within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(i).

Respondent correctly points out that the trial court improperly included housing instability and domestic relations as initial barriers when the initial barriers actually were emotional instability, substance abuse, parenting skills, and resource availability and management. Respondent's housing and domestic relations issues emerged later in this case. Nevertheless, the trial court did not err by finding that emotional instability, substance abuse, parenting skills, and resource availability and management continued to be barriers that respondent never rectified. Even though the trial court considered barriers that developed later in this case as part of its termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), the record indicates that

clear and convincing evidence supported the trial court's ultimate decision that statutory grounds existed under MCL 712A.19b(3)(c)(i) for termination of respondent's parental rights.

The record reflects that respondent never rectified any of the initial barriers in this case. Respondent did not address and rectify her substance abuse issues. The record indicates that she met with her psychiatrist to address her substance abuse problem, but she struggled to attend and refused to submit to the drug screens. When she did the screens, they revealed that respondent either did not take her prescribed medications or took medications not prescribed for her. There were only two reporting periods during the two years in which respondent engaged in services when drug screens revealed that she took the appropriate medications. Further, Wilkins testified that respondent refused to acknowledge that she had any substance abuse issues and refused services that were directed to assist her with her substance abuse problem.

The record also indicates that emotional instability remained a barrier in this case. In the beginning, respondent struggled to focus and to remember things, and her behaviors and speech were erratic. She told the DHHS that she was unable to take care of the children. To address this barrier, respondent started counseling at the Family Outreach Center. Although respondent attended therapy and her therapist believed that she made progress with emotional stability, by the July 2019 hearing, respondent's attendance had become sporadic. Wilkins expressed concern that respondent never actually benefited from therapy because she failed to accept any responsibility for the removal of the children from the home. Further, although her behavior and emotional stability briefly improved during the course of the proceedings, by the end she exhibited the same erratic behaviors as at the beginning of this case. Respondent acted uncooperatively, irrationally, and defensively, establishing that her stability and mental health remained a barrier.

Further, the record indicates that her lack of parenting skills remained a barrier. Respondent's mental health and her substance abuse issues caused her to struggle to care for the children at the beginning of this case. She asked the DHHS to remove the children from her care. Although respondent participated in parenting time to work on her parenting skills, she regularly missed her parenting visits. Although the parenting visits she attended generally went well, CH stopped participating in the parenting visits because of her failure to consistently attend. Although respondent had been referred to the Family Reunification Program, she minimally attended and did not benefit from it. She completed the Early Childhood Attachment Program. The record indicates that she was discharged from the Supportive Visitation program. Despite these services, respondent failed to benefit from the services and her lack of parenting skills remained a barrier.

Resource availability and management also remained a barrier for respondent. She never gained the ability to create a budget despite caseworkers' efforts and the Family Reunification Program. The record reflects that respondent refused to budget or never had sufficient knowledge of her financial information to do so. Further, she never participated in any of the budgeting classes that VanWingerden recommended. Respondent failed to make payments on her bills or set up payment plans for them. Although at the beginning respondent did not need a job because she had sufficient resources, by the end of this case, her finances were uncertain because she lost her Section 8 housing voucher and her public benefits.

The record supports the trial court's finding that clear and convincing evidence established that respondent would be unable to rectify the conditions that led to adjudication within a

reasonable time considering the children's ages. See MCL 712A.19b(3)(c)(i). This Court must focus on how long it would take her to rectify the barriers as well as how long the children "could wait for this improvement." *Matter of Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). In this case, at the initial disposition hearing, CH was 14 years old, CW was 9 years old, and MH was 2 years old. At the time of the termination hearing, CH was 16 years old, CW was 11 years old, and MH was 4 years old. Given the children's ages and the fact that they spent two years of uncertainty regarding permanency and stability, and because respondent failed to progress to overcome any of the barriers to reunification after two years of services, the trial court correctly determined that she unlikely would rectify the barriers within a reasonable time. Accordingly, the trial court did not clearly err by finding that clear and convincing evidence established statutory grounds for termination of respondent's parental rights under MCL 712A.19b(3)(c)(i).

Respondent also argues that the trial court clearly erred by finding that clear and convincing evidence established grounds for termination under MCL 712A.19b(3)(g) and (j). However, because we hold that the trial court properly terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), we need not address the other statutory grounds under which the trial court terminated her parental rights. See *In re HRC*, 286 Mich App at 461.

C. BEST INTERESTS

Respondent argues that the trial court erred by finding that termination served the children's best interests. We disagree.

Once a statutory ground for termination has been proven, the trial court must find that termination serves the children's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977(E)(4). A trial court must find by a preponderance of the evidence that termination serves the best interests of the children before it may terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error the trial court's determination that termination of respondent's parental rights served the children's best interests. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). We defer to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009) (citation omitted). We also defer to the trial court's special opportunity to judge the credibility of witnesses. *In re HRC*, 286 Mich App at 459.

When considering best interests, the trial court must focus on the children rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider several factors including the children's bond to the parent, the parent's parenting ability, and the children's needs for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court may also consider how long the children lived in the present home and the likelihood that the children "could be returned to [the] parent's home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249. In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may

include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [Quotation marks and citation omitted.]

Further, the children's safety and well-being, including the risk of harm they might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App at 142.

A preponderance of the evidence in this case supports the trial court's decision that termination of respondent's parental rights served the children's best interests. The record reflects that the trial court considered all of the evidence in the record and the applicable factors for its best-interest decision. Review of the entire record establishes that a preponderance of the evidence weighed in favor of finding that termination of respondent's parental rights served the children's best interests.

In this case, the children's bond with respondent weighed against termination. The record indicates that the children had a bond with respondent. Although some concerns emerged at the end of the case regarding CH's and MH's bond with respondent, Wilkins testified at the termination hearing that they both maintained a bond with her.

The other best-interest factors, however, weighed in favor of termination. At the end of this case, the children were placed in foster care where their needs were fully met. Their foster family worked with CW to address his behavioral issues. Further, a possibility existed that the foster family would adopt the children. CH indicated her willingness to be adopted by the family. The record indicates that the foster home provided the children the permanency and stability the children needed that respondent could not provide. Wilkins testified that termination served the children's best interests.

Respondent's failure to comply with her service plan weighed in favor of termination. Throughout this case, respondent only minimally complied with her service plan. She struggled to submit to drug screens and often refused to do them. She struggled to take her medications, and she repeatedly took medications that were not prescribed. She never attended a budgeting class, she never completed a budget, and she minimally complied with and benefited from the Family Reunification Program. She also repeatedly failed to communicate with her caseworkers. Further, by the end of the case she stopped attending counseling. Wilkins testified that respondent failed to show that she benefited from it.

Respondent's continued lack of parenting ability also weighed in favor of termination. When the children were in the home, respondent failed to get CW to school consistently and on time. She also failed to ensure that CW attended his appointments. Additionally, she struggled to teach MH how to use the toilet, and she struggled to get him into the Head Start program. Further, respondent's visitation history with the children also weighed in favor of termination. She regularly missed parenting visits which caused CW and MH disappointment. Wilkins observed

that instability definitely took a toll on them. CH stopped wanting to have parenting visits with respondent because of her failure to regularly attend the visits.

The record also indicates that, after the children were removed from the home, respondent entered an abusive relationship. Respondent accused the man that she was seeing of physically and sexually assaulting her. Concerns were expressed that the children witnessed some of the altercations that respondent had with this man. Respondent's history of domestic violence, therefore, also weighed in favor of termination.

A preponderance of the evidence supported the trial court's conclusion that termination of respondent's parental rights served the children's best interests. The trial court, therefore, did not err by terminating respondent's parental rights.

Affirmed.

/s/ Colleen A. O'Brien

/s/ Michael J. Kelly

/s/ James Robert Redford